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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

21 || This Document Relates to:

22      *Sears, Roebuck and Co. and Kmart Corp. v.*  
23      *Technicolor SA*, No. 3:13-cv-05262;

27 *Sharp Electronics Corp., et al. v. Hitachi, Ltd., et al.* No. 13-cv-01173;

Case No. 07-5944 SC

MDL No. 1917

**JOINT DEFENSE REPLY IN SUPPORT  
OF MOTION IN LIMINE #10 - MOTION  
TO EXCLUDE EVIDENCE OF ANY  
ALLEGED CDT PRICE-FIXING  
CONSPIRACY**

**ORAL ARGUMENT REQUESTED**

Date: None set  
Time: 10:00 a.m.  
Place: Courtroom No. 1

Hon. Samuel Conti

1       *Sharp Electronics Corp. v. Koninklijke Philips*  
2       *Elecs., N.V., No. 13-cv-2776 SC;*

3       *Target Corp. v. Chunghwa Picture Tubes, Ltd.,*  
4       *No. 11-cv-05514*

5       *Target Corp. v. Technicolor SA, No. 13-cv-*  
6       *05686.*

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11       **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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2 **I. INTRODUCTION**

3 Defendants' motion in Limine #10 seeks to exclude Sharp<sup>1</sup> from introducing at trial  
 4 evidence that relates exclusively to any alleged color display tube ("CDT") conspiracy. In its  
 5 opposition, Sharp fails to demonstrate how evidence that solely relates to any alleged CDT  
 6 conspiracy is relevant to its claims that relate solely to color picture tubes ("CPTs"), or why that  
 7 evidence should be admitted at trial. Sharp does not deny that it brings no claims relating to  
 8 CDTs. Instead, Sharp spends most of the opposition wrongfully accusing Defendants of  
 9 "improperly re-characterizing" its allegations. Sharp's opposition also evades the clear  
 10 testimony of its own expert Dr. Hausman's analysis of Sharp's claim and alleged damages.  
 11 None of these protestations alter the fact that Sharp seeks to use evidence that is wholly  
 12 irrelevant to its CPT claim, and the probative value of that evidence is substantially outweighed  
 13 by the danger of confusing the issues and fostering undue delay. The Court should grant  
 14 Defendants' motion to exclude Sharp from introducing any evidence that solely relates to an  
 15 alleged CDT conspiracy.

16 **II. ARGUMENT**

17 **A. Sharp's overbroad allegations do not dictate what is admissible at trial**

18 Defendants do not dispute that Sharp pled that there was a single CRT conspiracy.  
 19 Defendants, instead, contend that Sharp's complaint is not the litmus test of admissibility at trial.

20 <sup>1</sup>Although Defendants' motion *in limine* focuses mainly on Sharp and the fact that its  
 21 purchases were limited to CPTs alone, the reasoning therein applies equally to any Plaintiff that  
 22 bought only one type of CRT products. Such a Plaintiff should not be allowed to introduce  
 23 evidence wholly irrelevant to their damages. Both Target and Kmart purchased only CPT  
 24 finished products (rather than both CPT and CDT finished products). *See* Ex. 1 to the Declaration  
 25 of Tiffany B. Gelott in Support of Joint Defense Reply In Support Of Motion In Limine #10 -  
 26 Motion To Exclude Evidence Of Any Alleged CDT Price-Fixing Conspiracy ("Gelott Decl."), the  
 27 Expert Report of Alan S. Frankel, dated April 15, 2014, regarding Sears and Kmart, Exhibits 17c,  
 28 20a; Ex. 2 to the Gelott Decl., the Expert Report of Alan S. Frankel, dated April 15, 2014,  
 29 regarding Target, Exhibits 17, 20. Federal law dictates, then, that both Target and Kmart should  
 30 be excluded from presenting evidence that pertains solely to CDTs or finished products  
 31 containing CDTs, as it is irrelevant to their cases and more prejudicial than probative. *See* Joint  
 32 Defense Motion *in Limine* No. 10, February 13, 2015, pp.2-4. Additionally, the jury should be  
 33 given a limiting instruction that any evidence pertaining solely to CDTs or CDT finished products  
 34 introduced by Kmart and Sears' joint counsel should be construed only as to Sears and not as to  
 35 Kmart.

1 The mere fact that Sharp's complaint alleges a single CRT conspiracy does not control whether  
 2 Sharp can introduce evidence that solely relates to CDTs or CDT Products, neither of which  
 3 Sharp itself purchased. Rather, evidence is only admissible at trial if it has "any tendency to  
 4 make a fact more or less probable" and "the fact is of consequence in determining the action."  
 5 Fed. R. Evid. 401.

6 Although Sharp alleged that there was a single CRT conspiracy, it never claimed any injury  
 7 related to CDTs or demonstrated the relevance of CDTs to the injury it claims. Rather, a review  
 8 of Sharp's complaint—filed almost two years ago—demonstrates that Sharp framed its claim so  
 9 broadly that it neglected to specify even basic facts that Sharp knew at that time it filed its  
 10 complaint. For example, in its complaint Sharp alleged that it purchased CRT Products but never  
 11 alleged that it purchased CRTs themselves, and solely CPTs, as Sharp clearly knew.<sup>2</sup>

12 Of course, Sharp could not have been expected to know all relevant facts then, given that it  
 13 filed the original complaint before conducting discovery, a process which generally serves "to  
 14 narrow and clarify the basic issues between the parties, and . . . ascertain[] the facts."<sup>3</sup> But after  
 15 years of extensive discovery including millions of pages of documents, hundreds of depositions,  
 16 and several rounds of expert reports, the record has developed extensively and, in that course of  
 17 events, Sharp has expressly narrowed the scope of its claim. Sharp's own interrogatory responses  
 18 and expert report reflect the admission of a more narrow claim that does not include CDTs.  
 19 Sharp conceded that [REDACTED]

20 [REDACTED].<sup>4</sup> Therefore, Sharp cannot claim  
 21 that the allegations within its complaint accurately convey the current scope of its claim and the

22 <sup>2</sup> See generally Sharp Second Am. Compl. MDL Dkt. No. 2621.

23 <sup>3</sup> *Hickman v. Taylor*, 329 U.S. 495, 501(1947).

24 <sup>4</sup> Ex. 3 to the Gelott Decl., Sharp's First Set of Interrogatories (February 26, 2014), pg. 16,  
 25 Response to Interrogatory No. 12. Contrast this, for example, [REDACTED]

26 [REDACTED] See Ex. 4 to the Gelott Decl., Deposition of Jerry Hausman, July 23,  
 27 2014, at 232:15-233:13, 236:116-238:4 ("[REDACTED]

1 facts that are admissible at trial in support of that claim.<sup>5</sup>

2 **B. Sharp's expert, Dr. Hausman, undermines any claim as to the relevance of**  
 3 **CDTs**

4 Sharp argues that Defendants both “improperly re-characterize the plaintiffs’  
 5 allegations” and “seek to exclude evidence on the basis that they do not agree with those  
 6 allegations,” but these arguments are no more than red herrings. Opp at 1-2. Sharp’s early  
 7 sweeping allegation of a single CRT conspiracy is unmade by the detailed report of its expert,  
 8 Dr. Hausman, who—based on instructions of Sharp’s counsel—framed Sharp’s claims and  
 9 damages solely within the context of CPTs and CPT Finished Products.<sup>6</sup> Therefore, in moving  
 10 to exclude evidence that solely relates to CDTs, Defendants only are directly reflecting Sharp’s  
 11 own formulation of its claims, as communicated by their expert, Dr. Hausman. This is  
 12 reinforced by Dr. Hausman’s assessment of potential damages as solely relating to CPTs, not  
 13 CDTs.

14 The limited references to CDTs within Dr. Hausman’s expert report all run in one  
 15 direction: they emphasize that any evidence regarding the alleged CDT conspiracy is irrelevant  
 16 to Sharp’s claim and the determination of whether Sharp is entitled to any damages. Indeed,  
 17 within his report, Dr. Hausman only addresses CDTs twice—  
 18 [REDACTED]

19 [REDACTED]<sup>7</sup> Thus, contrary to  
 20 Sharp’s argument, “evidence regarding Defendants’ misconduct with respect to CDTs” is **not**  
 21 “evidence of the very conspiracy Sharp alleged.” Opp. at 6. It is instead evidence relating to a  
 22 product that has no relevance to Sharp’s injury. The sole use of CDT evidence, therefore, would

23 <sup>5</sup> See *Whited v. Motorists Mut. Ins. Co.*, No. 08-10653, 2009 WL 1406632, at \*3 (E.D. Mich. May  
 24 19, 2009) (“Properly conducted, discovery narrows and clarifies issues in dispute.”).

25 <sup>6</sup> Ex. 5 to the Gelott Decl., Expert Report of Jerry Hausman, dated April 15, 2014 (“Hausman  
 26 Report”), at ¶5 [REDACTED]

27 <sup>7</sup> *Id.* at ¶12 (emphasis added).

1 be to show “other bad acts” to imply that Defendants behaved similarly in the alleged CPT  
 2 conspiracy. *See Fed. R. Evid. 404(b)*. Such evidence is not admissible and should be excluded.

3 **C. The cases Sharp relies upon are inapposite**

4 In an effort to establish the relevance of any CDT evidence, Sharp relies on both *In re*  
 5 *Vitamins Antitrust Litigation* (“*In re Vitamins*”)<sup>8</sup> and *Univac Dental Company v. Dentsply*  
 6 *International, Inc.* (“*Univac*”).<sup>9</sup> Both cases are inapposite and should not govern the Court’s  
 7 ruling on Defendants’ motion.

8 *In re Vitamins* is inapposite for several reasons. First, *In re Vitamins* concerns a class of  
 9 direct purchaser plaintiffs, some of whom claimed injury relating to all products in the class,  
 10 while this motion concerns one Plaintiff group, Sharp, which does not claim injury related to  
 11 CDTs.<sup>10</sup> Second, the members of the Vitamin Products Class alleged a single conspiracy to fix  
 12 the prices of multiple vitamins and vitamin products, but they did not all purchase one type of or  
 13 the same vitamin. Members of the Vitamin Product class were comprised of “all person or  
 14 entities who directly purchased vitamins A, C, E, B1, B2, B3, B5, B6, B12, H, beta carotene,  
 15 astaxanthin, canthaxanthin, and/or vitamin premixes for delivery in the United States.”<sup>11</sup> Sharp,  
 16 on the other hand, alleged a single CRT conspiracy, but it only purchased and is only seeking  
 17 damages for one type of CRT, CPTs. Therefore, the “court’s rejection of defendants attempting  
 18 to divide the single vitamin products conspiracies into multiple separate conspiracies” in *In re*  
 19 *Vitamins* should have no bearing on Defendants’ argument here.<sup>12</sup> Note that defendants here do  
 20 not seek to apply this motion to the DPP or IPP classes because the same relevance factors do not  
 21 apply to the class setting where some class members claim injury for CDT products. Thus, *In re*  
 22 *Vitamins* is of no relevance here.

23 Sharp’s reliance on *Univac* is also misplaced. In *Univac*, the Court refused to exclude

24 <sup>8</sup> 209 F.R.D. 251 (D.D.C. 2002).

25 <sup>9</sup> 268 F.R.D. 190 (M.D. Pa. 2010).

26 <sup>10</sup> 209 F.R.D. 251 (D.D.C. 2002).

27 <sup>11</sup> *Id.* at 256.

<sup>12</sup> Opp. at 3, citing *In re Vitamins*, 209 F.R.D. at 265.

1 evidence that related to the actual product that the plaintiffs purchased, dentures. Thus, the  
 2 evidence at issue ran to the scope of the alleged practices as they related to the products the  
 3 plaintiff *actually purchased*, not to products that were irrelevant to the plaintiffs' claim, as CDTs  
 4 are irrelevant to Sharp's claim.<sup>13</sup> The ruling in *Univac* should not govern Defendants' request to  
 5 now exclude evidence regarding products that Sharp never purchased.

6 **D. Sharp misconstrues Defendants' request to exclude irrelevant evidence**

7 Finally, Sharp exaggerates the scope of Defendants' motion. Defendants do not seek to  
 8 exclude all evidence containing any reference to CDTs from trial, but rather seek to prevent  
 9 Sharp from introducing evidence that relates *exclusively* to CDTs rather than CPTs. Indeed,  
 10 Defendants recognize that Sharp intends to provide evidence, such as Sharp's Exhibits A- L,<sup>14</sup>  
 11 that discuss both CPTs and CDTs, and Defendants do not seek to exclude those documents here.  
 12 But the fact that Sharp intends to offer some documents that mention both CPTs and CDTs does  
 13 not justify the wholesale introduction by Sharp of evidence wholly unrelated to the product for  
 14 which it actually seeks damages: CPTs.<sup>15</sup>

15 While Sharp identified documents that may require scrutiny before they are admitted at  
 16 trial, there are *hundreds* of documents that solely relate to CDTs and should be excluded with  
 17 regard to Sharp. For example, Sharp should be precluded from introducing the SDI Plea  
 18 Agreement because it only covers a small subset of CDTs—not CPTs.<sup>16</sup> In addition, Sharp's  
 19 exhibit list contains many other documents that only discuss or pertain solely to CDTs and/or

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20 <sup>13</sup> *Id.*

21 <sup>14</sup> See Exhibits A-L to the Declaration of Craig A. Benson in Support of Plaintiffs Sharp  
 22 Electronics Corporation & Sharp Electronics Manufacturing Company Of America, Inc.'s  
 23 Opposition To Joint Defense Motion In Limine No. 10 – Motion To Exclude Evidence Of Any  
 Alleged Cdt Price-Fixing Conspiracy.

24 <sup>15</sup> Consideration of the admissibility of documents with references to both CPTs and CDTs, if  
 relevant, can properly be made at trial.

25 <sup>16</sup> Ex. 6 to the Gelott Decl., at 2-4 (May 12, 2011, SDI plea agreement). Note that this evidence  
 26 might also be excludable on the basis that it relates solely to Samsung SDI and no other party to  
 the litigation. See Defendants' Motion in Limine #5: To Exclude Plea By Samsung SDI  
 27 Company, Ltd. As To Non-Pleading Defendants Or, Alternatively, To Provide A Limiting  
 Instruction.

1 the CDT market.<sup>17</sup> These have no relevance to Sharp's claims.

2 The probative value of such documents is also substantially outweighed by the risk of  
 3 misleading the jury by confusing the issues and causing undue delay. Defendants would be  
 4 required to continually distinguish these irrelevant documents and introduce further evidence  
 5 and elicit additional testimony from both fact and expert witnesses in an attempt to neutralize  
 6 the introduction of the irrelevant CDT evidence. At a minimum, evidence that relates solely to  
 7 CDTs should be excluded at trial.

8 **III. CONCLUSION**

9 For the foregoing reasons, the Court should grant Joint Defense Motion in Limine No. 10  
 10 and preclude Sharp from introducing any evidence regarding any alleged CDT price-fixing  
 11 conspiracy.

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<sup>17</sup> See Ex. 7 to the Gelott Decl., (CHU00028521), [REDACTED]; Ex. 8 to the Gelott Decl., (CHU00028558E) [REDACTED]; Ex. 9 to the Gelott Decl., (CHU00031111E), a [REDACTED]

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